

REMARKS

Claims 24 – 41 have been examined. Claims 29 and 38 stand rejected under 35 U.S.C. §101 as claiming the same invention as Claim 1 of U.S. Pat. No. 6,628,809; Claims 24 – 28 and 33 – 37 stand rejected under 35 U.S.C. §102(e) as anticipated by U.S. Pat. No. 6,122,042 (“Wunderman”); Claims 32 and 41 stand rejected under 35 U.S.C. §103(a) as unpatentable over Wunderman; and Claims 30, 31, 39, and 40 have been identified as allowable except for their dependence from a rejected base claim.

Independent Claims 24 and 33 have been amended respectively to recite that the difference optical spectral distribution is analyzed with a database having a plurality of difference spectra. In view of the acknowledgment in the Office Action that “[t]he art of record does not teach or suggest ... using a database of difference values to identify an individual” (Office Action, p. 6), it is believed that those claims are now in condition for allowance. Amendments have been made to certain dependent claims for consistency with these amendments. The dependent claims are believed to be allowable over the prior art by virtue of their dependence from allowable claims.

The §101 rejections are respectfully traversed. The Office Action asserts that Claims 29 and 38 claim “the same invention as that of claim 1 of prior U.S. Patent No. 6,628,809” (“the '809 patent”) (Office Action, p. 2). First, Claim 38 is an apparatus claim, while Claim 1 of the '809 patent is a method claim. A claim to an apparatus cannot be coextensive in scope with a claim to a method. Second, it is respectfully noted that certain limitations are recited in Claim 1 of the '809 patent that are not required by either Claim 29 or Claim 38. In particular, Claim 1 of the '809 patent requires “applying a plurality of optical wavelengths to the subepidermal tissue” (emphasis added) of a target individual. Neither Claim 29 nor Claim 38 requires application of illumination to subepidermal tissue. In addition, Claim 1 of the '809 patent requires “positively verifying said target individual’s purported identity” (emphasis added). Neither Claim 29 nor Claim 38 requires positive identification of a purported identity

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but could instead embrace a method or system that checks the identity of an unknown person.


This distinction is discussed in the application at, *e.g.*, p. 6, ll. 8 – 19.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


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